IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WA.No. 1141 of 2001(E)

AGAINST THE JUDGEMENT IN OP.20444/1999 Dated 06/11/2000
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APPELLANTS/RESPONDENTS:
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1. UNION OF INDIA REPRESENTED BY THE DEFENCE SECRETARY, GOVT. OF INDIA, NEW DELHI.

2. THE AIR CHIEF MARSHAL, INDIAN AIR FORCE, INDIAN AIR FORCE ESTABLISHMENT, NEW DELHI.

3. THE DIRECTOR GENERAL OF RESETTLEMENT, WEST BLOCK IV, R.K.PURAM, NEW DELHI.

4. THE GENERAL SECRETARY, NATIONAL EX-SERVICEMEN CO-ORDINATION COMMITTEE, M.G.ROAD, KOCHI-35.

BY ADV. SRI.K.RAMAKUMAR, SCGSC
SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI.JOHN VARGHESE, ASSISTANT SG

RESPONDENT/PETITIONER:

P.J.VARGHESE, AGED 79 YEARS, S/O.PUTCHERRY JOSEPH, PUTCHERY HOUSE, EX-SERVICEMAN, MUNDAMVELI, P.O.KANNAMALI, KOCHI-7.

BY ADV. SRI.T.K.PANKAJAKSHAN PILLAI
SRI.GEORGE JAMES
SMT.MARY BENJAMIN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

W.A.NO.1141 OF 2001

Dated this the 7th day of March, 2007

JUDGMENT

Raman, J.

Union of India and 3 others are the appellants who were respondents in O.P.No.20444/99. The respondent herein was the petitioner in the said original petition. The original petition was filed, as the respondent /petitioner was not granted pension on the ground that he did not have the minimum required service of 15 years in the Indian Air Force. It was the contention of the appellants that the respondent herein was enrolled in Indian Air Force with effect from 1/3/1943 and discharged on 15/6/1957(total service of 14 years and 107 days). Hence he is not entitled for service pension. It was the contention of the petitioner that if the service rendered as certified in Ext.P1 is also taken into consideration, he would have more than 15 years of service. Ext.P1 was not taken into consideration while passing the order Ext.P8 declining the relief of service pension, which is impugned in the original petition. The learned Single Judge quashed Ext.P8 and a direction was issued to the 2nd respondent (2nd appellant herein) to consider the case of the petitioner afresh taking into account the service of the petitioner as certified in

Ext.P1. Thereafter, by order dated 4th November, 2001 during the pendency of this appeal his case was considered in the light of the direction issued by this Court as per the judgment impugned in this appeal, a copy of the said order was made available to us during the course of hearing, which reads as follows:

> "The above named ex-airman was enrolled in IAF on 01 March 1943 and discharged on 15 June 1957 'with gratuity, otherwise than at his own request'. He has served in IAF for 14 years and 107 days only hence he was not authorised with service pension. Now, Hon'ble High Court of Kerala vide its subject judgment directed the respondents to count his former service from 07 April 1942 to 19 February 1943 as per Annexure-P1 in subject OP. After counting his former service his total service works out to be 15 years and 60 days. Thus he becomes eligible to receive his service pension."

2. Thus, the respondent had been given the benefit. It is contended by the appellants that the mere fact that the appellants have complied with the direction issued by the learned Single Judge, will not affect the contention raised in the appeal, especially since they have already challenged the judgment by filing this appeal and the mere compliance of the judgment is of no consequence. It is true that merely because the appellant have complied with the direction, the appeal cannot be said to be not maintainable. We hold so. We then proceed to consider the merits of this appeal. Ext.P1 produced in this case is a certificate issued by the

Government of India, Ministry of Defence, Ammunition Factory, Khadki, Pune certifying that the petitioner/respondent, Ex-Turner III Gr. was entertained in Ammunition Factory, Kirkee with effect from 7/4/1942 and discharged on 19/2/1943 and the certificate itself is issued on the request of individual in connection with pension purpose. According to the appellants, the service rendered by respondent in the ammunition factory cannot be counted for the purpose of pensionary benefits in the Indian Air Force. But according to the respondent/petitioner, he was recruited in the emergency service and during the training period he was working in the ammunition factory. As such the service rendered by him cannot be excluded for the purpose of computing the length of service for pension.

3. In the affidavit supporting the petition, C.M.P.NO.2635/2001 filed by the Commanding Officer, Headquarters, Southern Air Command, Air Force, Thiruvananthapuram it is averred that Ext.P1 produced by the respondent/petitioner only shows that he was engaged in ammunition factory at Kirkee from 7/4/1942 to 19/2/1943; but no such records are available with the Air Force. As per the records available with the Air Force and Pension Regulations for the Air Force, he is not fulfilling the conditions of 15 years. There is no case for the appellants that if the

respondent/petitioner is actually rendered service in the ammunition factory, the same is not liable to be counted. When the respondent/petitioner has produced Ext.P1 and relied on by the learned Single Judge and relief has already been granted, the fact that no such records are available with the Air Force is not a reason to deny the benefit.

4. In the facts and circumstances as narrated above , as it clearly shows that the respondent/petitioner was already given the benefit pursuant to the judgment in question, Ext.P1 certificate issued by the Government of India, Ministry of Defence having been relied on by the learned Single Judge and in the absence of any other materials that such certificate cannot be put in evidence, we are of the view that this is not a fit case for interference.

Writ Appeal is accordingly dismissed.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.

P.R.RAMAN &
ANTONY DOMINIC, JJ.

W.A.NO.1141 OF 2001

JUDGMENT

7th March, 2007